

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRYAN P. SPENCE, et al.,

Plaintiffs,

v.

LLOYD J. AUSTIN III, et al.,

Defendants.

Case No. 4:22-cv-00453

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE AN OPPOSITION TO
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION OF FORTY-FIVE PAGES**

Pursuant to Local Rule 7.2(c), Defendants respectfully move for a 20-page expansion of the page limit for their opposition to Plaintiffs' motion for a temporary restraining order and preliminary injunction. In support of this motion, Defendants represent the following:

1. On May 27, 2022, Plaintiffs filed a 25-page motion for a preliminary injunction. *See* Dkts. 5, 14-1. Plaintiffs seek a nation-wide, Air Force-wide injunction preventing Defendants from: (1) applying three Department of Defense and Department of the Air Force policies or guidance documents concerning COVID-19 vaccine requirements; (2) continuing to conduct allegedly "across-the-board denial of religious accommodation requests for COVID-19 vaccination," "differential treatment of accommodation requests for the COVID-19 vaccination for secular reasons and accommodation requests for religious reasons," and "retributive or negative action against servicemembers who make or have made religious accommodation requests"; and (3) taking any discipline or adverse employment action against Plaintiffs. *See* Pls.' Mot. 2-3, Dkt. 14-1.

2. The putative class-action lawsuit includes nine named Plaintiffs, and Plaintiffs' 153-page appendix filed in support of their motion contains declarations from all nine Plaintiffs.
3. Plaintiffs contend that they are likely to succeed on the merits on their claims that the Air Force's religious accommodation process violates the First Amendment and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1. *See* Pls.' Mem. 7–19, Dkt. 5.
4. In addition to addressing these claims, Defendants' memorandum will also address numerous threshold constitutional questions of jurisdiction under Article III, which were not addressed by Plaintiffs. Defendants will also address venue, which was similarly not briefed by Plaintiffs.
5. Given the importance of the policies Plaintiffs seek to enjoin, the significant jurisdictional issues, the number of Plaintiffs, and the multiple claims raised, the additional pages requested are necessary for Defendants to provide the statutory and historic background and analysis to adequately address the issues raised by Plaintiffs' motion and complaint. The additional pages are also necessary for Defendants to individually discuss, with respect to each of the nine Plaintiffs, why vaccinating each Plaintiff furthers a compelling governmental interest and is the least restrictive means of furthering that interest, as required under the Religious Freedom Restoration Act. 42 U.S.C. § 2000bb-1(b). Defendants will endeavor to be brief, and respectfully submit this Court would benefit from a fuller analysis of the issues presented here. The interests of justice will therefore be served by the requested extension.
6. At least four other courts have permitted the Government to file at least a 40-page brief in opposition to the plaintiffs' motions for a preliminary injunction concerning vaccination directives issued by the Department of Defense and Military Services. *See Order, Robert*

v. Austin, No. 21-cv-02228-RM-STV (D. Colo. Nov. 17, 2021), Dkt. 33 (granting Defendants' motion to file a 40-page opposition brief); Endorsed Order, *Navy Seal I v. Biden*, No. 21-cv-2429-SDM-TGW (M.D. Fla. Oct. 29, 2021), Dkt. 17 (same); Defs.' Opp'n to Pls.' Mots. for a Temporary Restraining Order and Prelim. Inj., *Doe v. Austin*, No. 21-cv-1211-AW-HTC (N.D. Fla. Oct. 21, 2021), Dkt. 31 (after obtaining leave from the court during a status hearing, filing a 67-page opposition brief to two motions for a preliminary injunction); Defs.' Opp'n to Emergency Application for Temporary Restraining Order and Prelim. Inj., *Church v. Biden*, No. 21-cv-2815-CKK (D.D.C. Nov. 2, 2021), Dkt. 13 (filing a 40-page opposition brief in compliance with Local Civil Rule 7(e), which permits opposition briefs of up to 45 pages).

Defendants, therefore, respectfully ask this Court to enter an order granting them permission to file an opposition to Plaintiffs' motion for a temporary restraining order and preliminary injunction of no more than 45 pages.

Local Rule 7.1(a) Certification

Defense counsel conferred with Plaintiffs' counsel by email on June 9, 2022. Plaintiffs' counsel does not oppose the relief requested in this motion provided that Defendants would not oppose should Plaintiffs request an additional 20 pages for their forthcoming reply in support of their motion for a temporary restraining order and preliminary injunction.

Dated: June 9, 2022

Respectfully submitted,

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/s/ Cassandra Snyder

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2022, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Cassandra Snyder

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